

Securities and Exchange Commission

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application shall set forth facts showing that no material conflict of interest exists between the different classes of security holders concerning the subject matter of the solicitation.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 6 FR 3085, June 25, 1941; 6 FR 5485, Oct. 28, 1941; 10 FR 11283, Sept. 5, 1945; 59 FR 21928, Apr. 28, 1994]

§ 250.63 Approval of reorganization fees.

All fees, expenses and remuneration, whether interim or final, to whomsoever paid for services rendered or to be rendered in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary thereof, in any court of the United States, shall be subject to approval by the Commission as to the maximum amount that may be paid for such services. This section shall not apply to any payments approved by a court of the United States, in any proceeding in which the Commission has filed a notice of appearance pursuant to section 1109(a) of chapter 11 of the Bankruptcy Code (11 U.S.C. 1109(a)).

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 59 FR 21928, Apr. 28, 1994]

§ 250.64 Scope of applications for approval of reorganization plans.

Any application for approval of a plan of reorganization under section 11 (49 Stat. 820; 15 U.S.C. 79k), or otherwise, shall be deemed to include all applications and declarations under the act which would otherwise be required as to any action necessary to consummate such plan. (See § 250.24(c)(3).)

§ 250.65 Expenditures in connection with solicitation of proxies.

(a) *General provision.* Except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23 and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the act, no registered holding company or subsidiary thereof shall expend any money or other consideration in connection with the solicitation of any

proxy, consent, or authorization regarding any security of such company.

(b) *Exceptions.* This section shall not apply to:

(1) Ordinary expenditures in connection with preparing, assembling, and mailing proxies, proxy statements, and accompanying data; or

(2) Other expenditures not in excess of \$100,000 during any one calendar year.

(c) *Scope of declaration.* A declaration with respect to any matter within the scope of this section shall state the amounts and purposes of the sums proposed to be expended, and set forth any information available to the company as to any contest which has arisen, or may arise, with respect to the subject matter of such solicitation. Any such declaration may be included in any application or declaration filed with the Commission as to any related matter.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 59 FR 21928, Apr. 28, 1994]

OFFICERS, DIRECTORS AND REPRESENTATIVES OF REGISTERED HOLDING COMPANIES AND THEIR SUBSIDIARIES⁵

§ 250.70 Exemptions from section 17(c) of the Act.

Notwithstanding the prohibitions contained in section 17(c) of the Act,

(a) A registered holding company may have up to 75% of the members of its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located within the state or states served by the holding company system, *Provided, That:*

(1) Those affiliated persons do not also serve as officers or employees of those local commercial banking institutions; and

(2) No more than one director or 25% of the members of the board of directors of the holding company, whichever is greater, is affiliated with the same local commercial banking institution.

(b) A registered holding company may have up to 25% of the members of

⁵The statements which section 17(a) requires to be filed by officers and directors of registered holding company systems are filed on the forms prescribed under section 16(a) of the Securities Exchange Act of 1934.

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its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located outside the state or states served by the holding company system or investment bankers wherever located, *Provided, That:*

(1) Those affiliated persons do not also serve as officers or employees of those banking institutions;

(2) No more than one director or 10% of the members of the board of directors, whichever is greater, is affiliated with any one investment banker or with any one commercial banking institution;

(3) The total number of directors who are affiliated with investment bankers or commercial banking institutions does not exceed 75% of the members of the board of directors; and

(4) Where an affiliated person of an investment banker serves as a director of any company within a holding company system, the investment banker:

(i) Has not acted as a managing underwriter for the distribution of securities issued by any company in the holding company system for at least twelve months prior to the director's appointment or election to the board; and

(ii) Does not act as a managing underwriter for the distribution of securities issued by any company in the holding company system while the director serves on the board.

(c) A subsidiary company of a registered holding company may have up to 75% of the members of its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located within the state or states served by the subsidiary company, *Provided, That:*

(1) Those affiliated persons either do not serve as officers or employees of those local commercial banking institutions or, alternatively, do not serve as officers or employees of the subsidiary company; and

(2) No more than one director or 25% of the members of the board of directors of the subsidiary company, whichever is greater, is affiliated with the same local commercial banking institution.

(d) A subsidiary company of a registered holding company may have up

to 25% of the members of its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located outside the state or states served by the subsidiary company or investment bankers wherever located, *Provided, That:*

(1) Those affiliated persons do not also serve as officers or employees of those banking institutions;

(2) No more than one director or 10% of the members of the board of directors, whichever is greater, is affiliated with any one investment banker or with any one commercial banking institution;

(3) The total number of directors who are affiliated with investment bankers or commercial banking institutions does not exceed 75% of the members of the board of directors; and

(4) Where an affiliated person of an investment banker serves as a director of any company within a holding company system, the investment banker:

(i) Has not acted as a managing underwriter for the distribution of securities issued by any company in the holding company system for at least twelve months prior to the director's appointment or election to the board; and

(ii) Does not act as a managing underwriter for the distribution of securities issued by any company in the holding company system while the director serves on the board.

(e) An officer of a holding company may serve as a director of a commercial banking institution, *Provided, That:*

(1) The officer of the holding company does not also serve as an officer or employee of that commercial banking institution; and

(2) No more than one other officer of the holding company serves as a director of that commercial banking institution.

(f) An officer of a subsidiary company may serve as a director of a commercial banking institution, *Provided, That:*

(1) The officer of the subsidiary company does not also serve as an officer or employee of that commercial banking institution; and

(2) No more than one other officer of the subsidiary company serves as a director of that commercial banking institution.

(g) A person serving as an officer or director of a holding company or subsidiary company on April 15, 1986, shall not be disqualified from continuing to serve or from serving successive terms in that capacity solely because of an affiliation with a commercial banking institution or investment banker which existed on that date.

(h) As used in section 17(c) of the Act and in this rule:

(1) An *affiliated person* of a commercial banking institution or investment banker means an officer, director, partner, appointee or representative of that commercial banking institution or investment banker, as well as any person that directly or indirectly owns or holds with power to vote 5 percent or more of the outstanding voting securities of that commercial banking institution or investment banker.

(2) A *commercial banking institution* means any person:

(i) That engages directly or indirectly in the business of a bank, trust company, bank-holding company, banking association or firm; and

(ii) Any enterprise in which such person owns 20 percent or more of the equity interest.

The term excludes any person that derived 15% or less of its gross revenues from commercial banking and investment banking activities during the fiscal year immediately preceding an affiliated person's appointment or election to the board of directors, or appointment as officer, of a registered holding company or subsidiary company thereof. The term also excludes any Federal Reserve Bank, savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, or any receiver, conservator, liquidator, liquidating agent, or similar official or person thereof or therefor.

(3) An *investment banker* means any person:

(i) That engages directly or indirectly in the business of underwriting or dealing in securities that are not exempted from registration under the Se-

curities Act of 1933 by section 3 of that Act; and

(ii) Any enterprise in which such person owns 20 percent or more of the equity interest.

The term excludes any person that derived 15% or less of its gross revenues from commercial banking and investment banking activities during the fiscal year immediately preceding an affiliated person's appointment or election to the board of directors of a registered holding company unless those revenues were derived from acting as a managing underwriter for the distribution of securities issued by any company in such holding company system.

(4) A person's gross revenues from its own commercial and investment banking activities and from its ratable share of the commercial banking and investment banking activities of enterprises in which it owns 20 percent or more of the equity interest should be considered in determining the degree to which the person is engaged in such activities.

(5) A *director* means any director of a corporation or any individual who performs similar functions in connection with a corporation, partnership, trust, voting trust or other company.

(6) An *officer* means a chairman of the board of directors, chief executive officer, president, vice president, treasurer, secretary, and comptroller, or any individual who performs similar functions in connection with a corporation, partnership, trust, voting trust, or other company.

(7) A *managing underwriter* means an underwriter (or underwriters) who, by contract or otherwise, deals with the issuer, organizes the selling efforts, receives some benefit directly or indirectly in which all other underwriters similarly situated do not share in proportion to their respective interests in the underwriting, or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.

[51 FR 9003, Mar. 17, 1986]